

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 210 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

SANJAYBHAI SHIVALAL PATEL

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR BC DAVE for Petitioner
MS KMVALIKARIMWALA, APP,for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/08/98

ORAL JUDGEMENT

The petitioner by way of this petition challenges the order of externment dated 28-11-97 passed by the Deputy Police Commissioner, Southern Division, Surat City, under section 56 of the Bombay Police Act and confirmed in appeal by the order dated 26-2-98 passed by the Deputy Secretary, Home Department of the State of Gujarat, extening the petitioner from the area within

the jurisdiction of Police Commissioner, Surat City, Surat District (Rural), Bharuch and Valsad districts. for two years.

Since this petition is required to be allowed on the first contention advanced by Mr. Dave, learned Advocate for the petitioner, that there is total non-application of mind on the part of the extorting authority in passing the order of externment, it is not necessary for me to refer to and deal with the other contentions raised in this petition and to re-narrate the allegations made in the show cause notice issued under the Bombay Police Act. Mr. Dave has submitted that the impugned order of externment is passed relying upon the two criminal cases filed against the petitioner and which are pending trial. It is alleged that the said criminal cases fall under Chapters XVI and XVII of the IPC. In the submission of Mr. Dave, the alleged involvement of the petitioner falls under Chapter XVI and, therefore, inclusion of Chapter XVII by the extorting authority in the impugned order has resulted into non-application of mind on the part of the extorting authority and therefore the impugned order of externment has become illegal.

Having seen the statements reproduced in the impugned order, it is clear that the two cases being C.R.No.362/94 is for the alleged offences under sections 325, 506(2) and 114 and C.R.No. 389/96 is for offences under Sections 143, 147, 148, 149, 336 of the IPC and section 135 of the Bombay Police Act. Thus, it is clear that no offence falling under Chapter XVII of the IPC has been registered against the petitioner. To be more precise, Chapter XVII deals with offences against property. In view of this, the allegation that the petitioner is involved in the cases falling under Chapter XVII IPC is totally extraneous and is a case of non-application of mind and, therefore, the impugned order of externment is illegal and liable to be quashed and set aside.

In the result, this petition is allowed. The order of externment dated 28-11-1997 passed by the Deputy Police Commissioner, Southern Division, Surat City and as confirmed in appeal by the Deputy Secretary on 26-2-98 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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